UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
		Docket #1:18-cv-12355
SHATSKY, et al.,	:	MKV
Plaintiffs,	:	
- against -	:	
The Palestine Liberation Organization, et al.,	:	New York, New York April 29, 2021
Defendants.	:	TELEPHONE CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE JUDGE MARY KAY VYSKOCIL,
UNITED STATES DISTRICT JUDGE

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E X A M I N A T I O N S

Witness	Direct	Cross	Re-Direct	Re-Cross
None				

E X H I B I T S

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None				

HONORABLE MARY KAY VYSKOCIL (THE COURT): Good afternoon. This is Judge Vyskocil.

Ms. Dempsey, would you call the case, please?

THE CLERK: Good afternoon, your Honor. We're here in the matter of 18-civil-12355, Shatsky et al v. Palestine Liberation Organization et al.

Counsel, starting with plaintiff, please state your name for the record.

MR. STEPHEN SINAIKO: Good afternoon, Judge. My name is Steve Sinaiko. I am with Cohen & Gresser here in New York City, and I'm here this afternoon on behalf of the plaintiffs.

THE COURT: All right, good afternoon.

MR. RONALD WICK: Good afternoon, your Honor. This is Ron Wick with Cohen & Gresser, also on behalf of the plaintiffs.

[Judge leaves session briefly to get papers.]

THE COURT: I'm sorry. Could I ask plaintiff's counsel to begin again with appearances?

MR. SINAIKO: Certainly, your Honor. My name is Steve Sinaiko; I'm with Cohen & Gresser here in New York City, and I'm here this afternoon on behalf of the plaintiffs.

THE COURT: All right, good afternoon,

Mr. Sinaiko.

MR. WICK: And this is Ron Wick with Cohen & Gresser in Washington, DC, also for the plaintiffs.

THE COURT: All right. Good afternoon, Mr. Wick.

Other appearances for the plaintiffs?

MS. ERICA LAI: Erica Lai from Cohen & Gresser from Washington, DC, also on behalf of the plaintiffs.

THE COURT: Good afternoon, Ms. Lai.

MS. SOFIA ARGUELLO: Good afternoon, your Honor. This is Sofia Arguello from Winston & Strawn in New York, also on behalf of the plaintiffs.

THE COURT: Good afternoon, Ms. Arguello.

MR. ABBE LOWELL: And, your Honor, this is Abbe Lowell, also of Winston & Strawn, appearing on behalf of the plaintiffs.

THE COURT: All right. Good afternoon, Mr. Lowell.

Anyone else for the plaintiffs?

Mr. Kolansky is not on the line?

MR. DAVID KOLANSKY: Your Honor, I'm here. This is David Kolansky on behalf of plaintiffs, from Winston & Strawn in New York. I have not filed an official appearance in this case, however.

THE COURT: Okay. I see. All right. Anyone else on behalf of the plaintiffs?

All right, then, on behalf of the defendants, please?

MR. MITCHELL BERGER: Good afternoon, your Honor. This is Mitchell Berger from Squire Patton Boggs for the defendants.

THE COURT: Good afternoon, Mr. Berger.

MR. MITCHELL BERGER: Good afternoon.

THE COURT: Other --

MR. GASSAN BALOUL: Good afternoon, your Honor. This is Gassan Baloul from Squire Patton Boggs on behalf of defendants.

THE COURT: Good afternoon, Mr. Baloul.

MR. JOSEPH ALONZO: Good afternoon, your Honor. Joe Alonzo from Squire Patton Boggs on behalf of the defendants.

THE COURT: Good afternoon. Are there any other appearances?

All right, then, thank you. So we are here for basically a discovery conference to deal with the squabbling that is going on among the parties. We're conducting today's conference remotely by telephone because we remain subject to certain restrictions as a result of COVID-19, and frankly, for the efficiency and cost savings to all parties.

Having said that, today's contact information was posted on ECF, and the hearing is open to the press and the public as if we were in open court. Anybody wishing to access today's proceedings is able to do so using that contact information. I would remind everyone on the call that, as with all court proceedings, you are strictly prohibited from recording or rebroadcasting any portion of today's proceedings.

I would ask, given the large number of people that we have on the line, that everyone -- and that's whether you've stated an appearance on the record not -- please mute your lines to cut down on background noise and interference on the phone lines. When you do address the Court, obviously, you need to unmute your line, and please identify yourself for the record so that it is clear to the Court who is addressing me.

So, as I said, we're here because the parties seem to, in my view, unnecessarily be behaving rather unprofessionally and unable to deal with in a professional manner the discovery issues in this case.

At ECF number 60 on -- I believe the date was February 8th -- I entered an Order authorizing the plaintiffs to conduct jurisdictional discovery to determine whether the defendants are subject to personal jurisdiction

under the Promoting Security and Justice for Victims of Terrorism Act, the PSJVTA of 2019. Apparently the plaintiffs have served discovery, document requests, noticed depositions and served Requests for Admissions. It is the Court's understanding that the defendants have produced a handful of documents pursuant to the document demand, some of which they have redacted. And they take the position that since at least one of those documents establishes a payment as defined in the statute in relation to a terrorist act that injured or killed a US national, that they don't need to produce discovery with respect to any of the other prongs of the statute establishing jurisdiction. As I understand defendants' position, it's because the plaintiffs in their Complaint specifically allege jurisdiction under that prong of the statute. Defendants also resist the attempt by the plaintiffs to conduct depositions. As I understand it, five potential witnesses have been noticed for deposition.

After I scheduled today's conference to deal with those issues and with the corresponding request by the plaintiffs to enlarge the time within which discovery had to be completed and modify the schedule for the summary judgment motions that defendants have told me they intend to make, I received additional letters. Those letters

complain about defendants' responses to Requests for Admissions that were served.

And then there are another round of letters dealing with a request by the plaintiffs to take additional discovery under Rule 56 in connection with the contemplated Motion for Summary Judgment by the defendants.

So -- and then there's another letter in between suggesting that I have to deal with everything at today's conference.

So let me just first say at the outset the flurry of letter writing needs to come to an end. The Court doesn't need letters from the parties suggesting to us how to manage the docket. It's apparent to the Court that I should deal with all of the outstanding issues when I have parties in before me. So I don't need a letter from the litigants suggesting that to me.

Next, with respect to the request to take discovery in regard to the contemplated summary judgment motions, I agree completely with the defendants that that letter is premature. And, frankly, I put it in the category of what I'm talking about where I don't think people are behaving very professionally or with the level of experience and expertise and reputation that the two firms before me -- actually, I guess it's more than two

firms -- three firms before me have. The letters are written largely on behalf of -- on the letterheads Squire Patton Boggs and Cohen & Gresser. I haven't seen anything addressed to me from Winston & Strawn, so I'm addressing the comments about the letter-writing campaign largely to Squire Patton Boggs and Cohen & Gresser. You just need to stop this letter-writing campaign.

But I agree with Squire Patton Boggs that the request for Rule 56 discovery is premature, and it's denied right now without prejudice. Let's wait until the motions get made and see what the arguments are before you start saying you need discovery to respond to those motions. So that takes care of the letter motion at 76 and the opposition at 77 on the docket.

With respect to the discovery requests I have carefully read all of the documents that you've submitted to me. And I have the following observations before I hear from people. First of all, the defendants do not get to unilaterally say, "I've given you a document that fits within one of the prongs of the statute which you, plaintiffs, say is sufficient to establish jurisdiction; and, therefore, I'm not going to give you anything beyond those handful of documents, and I'm not giving you anything with respect to the rest of the prongs." That's just not

defendant's call -- unless the defendants are prepared to stipulate that personal jurisdiction exists in this case. If you're not prepared to do that, you need to respond to the discovery and turn over documents with respect to each of the potential prongs of the statute.

Having said that -- and the same is true, frankly, with respect to the Requests for Admissions. One of the objections that I read with respect to the documentary discovery notices is that, well, some of this may be appropriate to deal with in Requests for Admissions. And then as I read the correspondence that came in about the Requests for Admissions, it seems that the position that was taken is that, among other things, is that the Requests for Admissions are -- let me just find the part that I'm trying to remember here -- that they go to things beyond that one prong of the statute that you're talking about and that, in any event, they're overly broad, you can't use them to obtain an admission of a fact already known, and I take it there's some suggestion facts are known by virtue of the documents that we've produced. It is not appropriate to respond to a Request for Admission by saying, "Well, you can get the information out of the documents."

Now, having said that, the plaintiffs' discovery

demands are grossly overbroad and abusive. I think I read somewhere there were 200 Requests for Admissions. That's just ridiculous. I authorized jurisdictional discovery in this case; I did not authorize the kind of abusive, overly broad discovery that has been propounded here. So, for example, the plaintiffs are not entitled to decades of information when all I have ordered is jurisdictional discovery, and this statute was passed in 2019. So decades' worth of information is simply inappropriate in this case.

Now, finally, with respect to the depositions, the wholesale refusal to produce witnesses is inappropriate and overruled, and the witnesses should be produced. To the extent the defendant has a legitimate objection, for example, there's an argument that some of the questions that will be asked will invade functional immunity under the United Nations, I guess it's Headquarters Charter. If questions get asked that invade privileged areas, object on the record at the deposition that that's not a grounds to wholesale refuse to produce someone. So I'm going to order one by one -- let's deal with the depositions -- and I am ruling that the five witnesses are to be produced.

With respect to the Requests for Admissions and the document demands, I am ordering that it is not

appropriate, and I'm overruling an objection based on the fact that we've already produced one document that establishes or falls within the first prong of the statute for jurisdictional purposes. And absent an admission or a stipulation on the record by the defendants -- I'm not saying you -- clearly you don't waive your challenge to the legitimacy or the constitutionality of the statute itself -- but unless you're prepared to stipulate that under the statute as written you are subject to jurisdiction, the objections to the discovery are overruled.

Having said that, I am directing the plaintiffs to go back and pare back your discovery and limit it to jurisdictional discovery of a reasonable amount with the time parameters in mind that I've just suggested.

Now, I will hear from people if they wish to be heard; but, as far as I'm concerned, you have my views on the subject, and the final thing we need to talk about is a new schedule. I'm telling the parties right now the defendant, in my view, is in contempt of my Order that jurisdictional discovery should take place. The defendant does not get to define what that discovery should be, absent a stipulation which moots the need for the discovery, in which case you should have made the

stipulation and written to the Court saying the need for discovery is now mooted. And you haven't done that. Any further obstruction of discovery, I will entertain applications for sanctions. Having said that, the plaintiffs' discovery is also overly broad and abusive. But the proper remedy for that is for someone to bring on a Motion for a Protective Order.

So is there anybody who wishes to be heard with respect to the Court's guidance on these discovery issues?

MR. SINAIKO: Your Honor, this is Steve Sinaiko for the plaintiffs.

THE COURT: All right, the plaintiffs first, and then I'll hear from the defendants. It's the plaintiffs' discovery. But I'm warning you do not spit back at me everything you've said in all of these volumes of letters. I've read them all with great care.

MR. SINAIKO: Thank you very much, your Honor. I certainly don't want to -- I don't want to delay you with a recitation of what's in our papers; I would not do that. What I do want to point out is that --

THE COURT: All right, I'm sorry, excuse me. Who is speaking to me?

MR. SINAIKO: It's Steve Sinaiko for the plaintiffs.

THE COURT: All right, Mr. Sinaiko, go ahead.

MR. SINAIKO: As I said, I don't want to go back over what's already set out in the letters -- and I know you've read them, and that's as it should be. What I did want to point out were a couple of things. Number one, our document requests actually are tailored to the time limits that are set out in the PSJVTA, that is to say, I think April 18th, you know, for prisoner payments and martyr payments, and I think it was January -- there was a date in January of 2020 with respect to US facilities and activities.

That said, there is a need for some -- with respect to the prisoner payments issue, we're only interested in seeking discovery with respect to payments that were made during the time period that is relevant to the PSJVTA, but what I want to clarify is the underlying events that made a -- that is to say, the terrorist attacks that make a particular payment a prisoner payment or a martyr payment that triggers the PSJVTA, those events can be back some time. And, in fact, in some instances, they date back a long time because, as we understand it, the defendants' practices to continue making payments in respect of terrorist activities long after the activities take place, and we still have to make a prima facie showing

that these terrorist acts occurred and that the payments are being made by reason of the imprisonment of the person in respect of whom the payment is being made or the death of that person. So there are some documents that we'll need that go back beyond the time period, you know, beyond the narrow time frames that the PSJVTA sets. But we only want, you know --

THE COURT: [indiscernible] --

MR. SINAIKO: Oh, I'm sorry.

THE COURT: -- during the time frame, right?

MR. SINAIKO: Sorry?

THE COURT: But the payments have to be made during the relevant time frame.

MR. SINAIKO: Of course. And we've only asked for documents relating to payments that were made during the time frame, and we're only interested in US activities and facilities that are in place or being used during the statutory time frames. The other -- the information or documents that we want that predates the time frames is just, you know, with respect to other elements of the statute that also need to be established, you know, to which we also need to make our prima facie case. So that said, we are certainly prepared to work with the defendants. We have had a number of conferences with them,

a number of meet-and-confers to try to work out our differences. We are prepared to -- we're prepared to work to narrow our requests in a cooperative way.

With respect to the US activities and facilities prong of the PSJVTA, our efforts to narrow the requests that we've made really are going to have to be done in a cooperative way. We're going to need some help from the defendants in order to appropriately tailor those requests. So we're prepared to work with -- you know, we're prepared to work to limit our requests appropriately, but the only point I want to make is we're going to need some help from the defendants to get that done.

THE COURT: All right, counsel, defendants don't have an obligation to tell the other side what kind of discovery they should be asked for. So --

MR. SINAIKO: Well, of course, your Honor.

THE COURT: Hold on. Hold on.

MR. SINAIKO: I'm sorry.

THE COURT: So narrow your requests, send a letter or call the other side. And it sounds like you probably all should do the things initially in writing because you can't agree on anything. So narrow your requests and settle on, with my guidance that I've given you, what you believe are appropriate document demands and RFAs that

you're going to press. The other side then has an opportunity to give you objections or try to get you to narrow them further. If you don't, either they move for a Protective Order or you move to compel, and the party that's abusing the process is going to be subject to sanctions.

MR. SINAIKO: Yes, your Honor. If I could, the one point I had in mind -- and this is something that we had raised with Mr. Berger during one of our meet-and-confers some time ago -- it would be very helpful to us from the perspective of narrowing our requests with respect to the US facilities and activities prong of the statute -- if we had, you know, in our hands a document that lists the individuals who are either employees or agents of the defendants or otherwise conducting activities in the United States on their behalf during the relevant period because if we have a list of that nature, we can focus, you know, on the description of what these people's jobs are here in the United States, it would be possible for us to formulate discovery requests that are tailored, you know, to the nature of the activities that might be going on here in our country.

So I guess what I'm saying is with that list in hand -- it would be very difficult for us to limit our

requests, you know, vis-à-vis the US --

THE COURT: -- asking for that?

MR. SINAIKO: I'm sorry?

THE COURT: Did you serve a request asking for that?

MR. SINAIKO: We did. We served a request asking for that information, and it was declined.

MR. BERGER: No, that's not correct, your Honor. But I'll wait for Mr. Sinaiko to finish. This is Mitchell Berger speaking.

THE COURT: All right.

MR. SINAIKO: We served a request asking for an organization chart. We served a request asking for the identities of individuals who have conducted activities in the United States on behalf of the defendants during the relevant period. And during the meet-and-confer, we specifically requested a list along the lines of what I just described, and Mr. Berger said that such a list was in preparation for us. But it was never delivered. So without that kind of information, it's actually difficult for us to tailor the document requests in the way that the Court is suggesting, although of course we're prepared to make an effort to do that. I guess what I'm trying to do is lay down my marker and perhaps get the Court's

assistance in helping us get the information that we need in order to do this as efficiently as it can be done.

THE COURT: Look, counsel, I'm not going to teach you how to conduct discovery in this case, but the statute has several prongs and says, you know, if you make payments to recipients defined in the provision in relation to a terrorist act that injured or killed a US national, why aren't you just asking for all documents that reflect that?

MR. SINAIKO: We've done that, your Honor. We've done that.

THE COURT: So --

MR. SINAIKO: I'm actually now talking about the paper-sway prong of the statute, as we call it. What I'm now talking about is the prong of the statute relating to activities undertaken on behalf of the defendants in the United States during --

THE COURT: I understand. You --

MR. SINAIKO: Okay.

THE COURT: -- cut me off. And I was going --

MR. SINAIKO: I apologize.

THE COURT: -- to say request number two should say, "All documents relating to the maintenance of any office or other facility or the engagement in any activity in the United States," during the relevant time period.

MR. SINAIKO: Okay.

THE COURT: To me, those are the two requests you ought to be making.

MR. SINAIKO: I think that's helpful, your Honor.

THE COURT: All right. Let me hear from the defendants.

MR. BERGER: Thank you, your Honor. This is Mitchell Berger from Squire Patton Boggs. I had four quick points I'd like to make. One is given the point your Honor made about functional immunity for the depositions, would your Honor be open, as an alternative, to a 30(b)(6) deposition of defendants that listed the topics so that we would be able, in lieu of the 530(b)(1) depositions they've noticed, so we'd be able to determine in advance whether we're going to run into issues of immunity? It strikes me that that is a way of ferreting out in advance whether there are objectionable topics on which we need the Court's guidance rather than interrupting depositions to plague the Court with discussions about objections.

THE COURT: All right, look, my reaction to that is certainly Mr. Sinaiko and his colleagues could serve a 30(b)(6) deposition notice in which they asked for the person most knowledgeable with respect to the two categories, the two prongs that could create jurisdiction.

And you could then pick the witness. But they also are entitled to get witnesses whose identities are known to them if they have a good-faith belief consistent with their obligations as officers of the court. And I'm not going to tell them that they can't act for somebody by name.

MR. BERGER: Certainly, your Honor. And that leads to my second point, which is four of the five deponents they have noticed are senior officials of Palestine's mission to the United Nations. And not only do they know the names, they apparently know what it is they want to try to prove from these individuals because they have both alleged these statements in their Complaint and put them into the Requests for Admissions, and we have admitted them. And that's why, your Honor, respectfully, we object that the depositions were not the most efficient way to find out that information.

Given that we have admitted to their public statements, we suspect that what they want to do is get into areas of privilege. And I certainly hear your Honor and fully comply with the point about functional immunity; however, it seems like we could avoid and narrow areas of anticipated likely dispute if in lieu of the 30(b)(6) deposition, for example, of the ambassador to the United Nations, they ask what they wanted along the lines of what

your Honor suggested about here are the subjects we want to discuss, you know, activities in the United States falling outside the exemptions in the statute. That is a much narrower deposition and one that will avoid areas of dispute going forward.

THE COURT: Well, I'm telling you -- I'm telling them right now that the depositions are limited to the categories that I summarized looking at the statute, the two bases for the assertion of jurisdiction under the statute. Everything else is off limited.

MR. BERGER: Thank you, your Honor. That's very helpful. I hadn't fully appreciated that, and I do appreciate the Court's guidance on that.

THE COURT: All that's allowed is jurisdictional discovery at this point. And I, in fact, already ruled that their request for merits discovery, which, you know, they asked for in order to respond to your summary judgment motions which haven't been made, is premature.

MR. BERGER: Thank you, your Honor. And that's a very helpful clarification.

The second and third points I wanted to make go to your Honor's point about the stipulation. And this is what has -- where I think our ability to speak with the Court is helpful, which is the defendants don't contest that the

payments that are reflected in the documents that we produced satisfy the factual predicate of the PSJVTA regarding payments. What we have wanted to do is make sure that any such statement that we do not contest that predicate leaves us fully open to make our constitutional arguments and other arguments, legal arguments, against application of the statute. If that helps narrow the areas for jurisdictional discovery, we think we have been clear that we do not contest that predicate.

THE COURT: All right, let me make one clarification about that. I understand you to be -- well, from the letters, I should say, what I understood was that you are willing to concede or admit or stipulate to the fact that there were payments made in relation to a terrorist act that injured or killed a US national and that your position was since you are willing to agree that that statutory predicate has been met, you will not turn over discovery with respect to the second prong about maintaining an office or a facility or engaging in activity in the United States that is not exempt.

MR. BERGER: Respectfully, your Honor, that is not correct. If I might just for 30 seconds rewind the tape to our November 2020 conference? Your Honor directed the plaintiffs to amend their Complaint to state their PSJVTA

theory. They stated four theories under the PSJVTA, three of which involve US activities. We have provided discovery with respect to all four of them. Discovery has been provided on the so-called consular activities in the United States. That occurred by way of third-party depositions in which everybody participated. Their so-called political propaganda and proselytizing in the United States, which appears at paragraph 70 through 83 of the Amended Complaint, we have provided admissions on that issue in our responses to Requests for Admissions, which fully address the relevant paragraphs of the Amended Complaint alleging such activities. And we do not contest that as to the fourth one, an office in the United States, we don't contest that the UN mission is there. The debate is purely a legal one, which is whether or not that is an "office," quote/unquote, in the United States in the language of the statute or whether it's exempt.

But there really are no factual disputes, and it's incorrect for Mr. Sinaiko to argue that we've only provided discovery with respect to the payments prong, when in fact we have provided discovery through admissions responses and third-party discovery on the US activities prong. Our only argument, your Honor, has been whether it is sufficient in order to allow us to move to a Motion to Dismiss, which

raises entirely legal issues.

THE COURT: Right. But -- so you told me with respect to the three US activities theories, you've given discovery by way of responses to Requests for Admissions. But you have shut down documentary discovery with respect to that, correct?

MR. BERGER: Yes, your Honor, because of our concern over functional immunity, which of course applies to documents as well as to testimony. And what they want, in essence, is for us to open the files of the UN mission. And from our standpoint, everything that they want from the UN mission has to do with something that is covered by functional immunity.

I mean, your Honor, we hear you loud and clear. It is not our objective to be in contempt of the Court's Order, but by the same token, we cannot waive the UN mission's functional immunity under the UN Headquarters Agreement.

THE COURT: But your response needs to say, "We will produce all responsive documents, subject to the functional immunity privilege," or attorney-client or whatever other privileges there might be. You cannot say, "I concede this and so I'm not giving you the documents." Because they are entitled to probe and, you know, frankly,

challenge the accuracy of your concessions that there is this limited amount of activity. And they're entitled to probe whether there's more activity than what you're conceding, for example.

MR. BERGER: Your Honor -- and I hear the Court loud and clear -- but I'm trying simply to get guidance so that we're not back here in three weeks and your Honor says, "Weren't you listening to me?" because we are listening, and we're trying very hard to understand where we go.

But, for example, there's an enormous amount of documentation, all of which falls within the document requests as currently stated, overbroad to be sure, that effectively asks for every piece of paper during the post-PSJVTA period generated within the UN mission of Palestine. And that simply can't be something where we can turn that over unless your Honor directs us to do so because it has to do with the diplomacy of Palestine.

THE COURT: But my answer, if I were in your shoes, would be that that is overly broad, that is not -- every document generated by a mission doesn't go to establishing that the mission exists, so that if you're stipulating that the mission exists, then that one can be taken off the table. And I --

MR. BERGER: We -- I'm sorry, your Honor; I didn't mean to interrupt.

THE COURT: I hear you that you may have a legal argument that that doesn't suffice for statutory purposes. And we'll deal with that separately once we get past discovery.

So I think I was pretty loud and clear to the plaintiffs that I found their requests overly broad and abusive. So every document generated by a mission or every document generated by activities in the United States is overly broad, grossly overly broad.

MR. BERGER: Thank you, your Honor. And that's very helpful. And to answer your Honor's question of a moment ago, we do not contest that the mission exists. The debate is purely a legal one about where the Court ultimately will draw the line as to whether or not the activities of mission personnel, which are known and which are the subject both of their allegations and Requests for Admissions that we have admitted, whether those fall within or without the ambit of the statute. And so we're not resisting admitting those statements; and if there are related documents that they want to focus on, then I suppose that doesn't raise the functional immunity issue. But their theory, as I read it and as it has been

articulated during our meet-and-confer process, is in essence the UN mission to the extent they're simply not standing on the floor of the General Assembly or the Security Council, that's the only thing that's protected.

And our view is that, given the mandate of the mission to advocate for Palestinian statehood, the mission -- the personnel, when they're engaged in public advocacy, are covered by functional immunity. And we're never going to agree, plaintiffs and defendants, on that one, and so we'll simply be arguing over it. What we need to be focusing on, respectfully, is facts. Their Requests for Admissions, for example, use language like, you know, "within the meaning of the PSJVTA." Those are requests for -- I am sure, if they narrow their requests, we can deal with that.

But our main concern is we can't be in a position both here and generally of waiving the functional immunity that protects the mission's papers. But we do stipulate that the mission exists. We have admitted that the mission personnel, the ambassador and others, have made the statements that are alleged in the Complaint. And we've done that in responses to Requests for Admissions number 65 and 74 through 91. And so in some instance our problem is we don't think the plaintiffs are willing to believe what

they see from us. Your Honor, I'm not trying to --

THE COURT: Well --

MR. BERGER: -- trying to re-argue. I hear what you're saying. That's our problem.

THE COURT: Right. I think the problem is also a little bit different. I do think, in fairness to your side, the plaintiffs are trying to use this to get some discovery that could be arguably merits based. I do also pick up -- and I'm willing to hear from you in response, Mr. Sinaiko -- I do also pick up that you are, it seems, not streamlining discovery to this case and you are looking at, you know, other litigations that are pending elsewhere, as well. I could be wrong about that, but I would like to hear from you why these stipulations don't moot much of the discovery that you're asking for.

MR. SINAIKO: Your Honor, Steve Sinaiko here. Thank you very much for -- your inviting me to comment. You know, Mr. Berger says that, for example, the question whether the UN mission, you know, falls within -- you know, the permanent observer mission falls within the UN exemption under the PSJVTA is a pure legal question. The answer to that is it actually is both a fact and a legal question because it depends on how that facility is used. It may well be that Mr. Berger is prepared to stipulate

that the mission is used exclusively for purposes of the, you know, official business of the United Nations, but I don't think the plaintiffs are prepared to stipulate to that. As you acknowledged a moment ago, we're entitled to test that assertion. And the only way for us to test that assertion was to talk to people who work there, get documents and understand what exactly is going on there.

And, frankly, it's, you know, to Mr. Berger's repeated point about having admitted a number of facts in response to our Requests for Admissions -- and this again is another point that your Honor made a moment ago, yeah, they've admitted a lot of things that -- you know, they've admitted a lot of public statements are in fact their statements. And they have vigorously taken the position in the Sokolow litigation, because there's a brief that they failed there that they put in front of your Honor, that those activities are not, you know, are not a basis for jurisdiction under the PSJVTA because they are exclusively related to the official business of the United Nations. And, you know, our response to that, as well, we're entitled to test that from a factual perspective, as well; and, frankly, we're entitled, as you observed a moment ago, to try to identify other activities that they haven't admitted and that we weren't able to identify just

by looking at public source documents.

So there is actually significant factual discovery that needs to be taken on these issues; and, you know, to the extent that we're able to arrive at appropriate parameters, you know, that's terrific, only I suppose one question I had is to the extent that Mr. Berger feels it necessary to withhold documents from production based on immunities or privileges of the UN or diplomatic immunity or whatever it is, is he going to provide us with a privilege log so that we can test those assertions of immunity, as well.

THE COURT: I have a note to myself that one of the final things I want to say is that to the extent documents are withheld, yes, privilege logs need to be turned over. The Federal Rules apply here, folks.

MR. BERGER: Your Honor, Mitchell Berger again.

THE COURT: Perhaps --

MR. BERGER: I'm sorry. I apologize, your Honor.

THE COURT: Hold on. Hold on. And I have another matter that I have to get to shortly, so we're not going to go on indefinitely with this back-and-forth.

MR. SINAIKO: Sure. My one last comment, in response to your Honor's question about sort of why are we pursuing this discovery, the only reason that plaintiffs

are pursuing this discovery is for the purpose of proving up as necessary personal jurisdiction in this case. We are not pursuing this discovery for other litigation. There's a Confidentiality Order in place that prevents us from disclosing to anybody information that the defendants give us that is designated confidential. So there's no sort of nefarious purpose here. The only purpose we have, the only purpose, is obtaining discovery to prove jurisdiction as necessary in this case.

THE COURT: You just quoted to me about the positions they took in the DC case.

MR. SINAIKO: Of course. That was a different phase of the very same litigation, your Honor.

THE COURT: It's not the same litigation as what's front of me.

MR. SINAIKO: I mean, are we talking about the litigation that took place in front of Judge Leon and subsequently in front of the DC Circuit arising out of the [indiscernible] suicide bombing?

THE COURT: Counsel, I really don't know. You're the one that just a few minutes ago talked to me about the other case. And then you turn around and say, "I'm only litigating for purposes of this case." So, then, stick to this case and don't talk to me about statements they made

in a different case.

MR. SINAIKO: Oh, I'm so sorry, your Honor. I was -- yes, now I know exactly what you're talking about now. I was momentarily confused. Yes, there was a brief that they filed, that the defendants filed, these very same defendants, in the Sokolow litigation that is pending in front of Judge Daniels. And, actually, the only point I made was the activities that the defendants have admitted to engaging in in this case by way of their responses to our Requests for Admissions are the very same activities that the defendants have argued to Judge Daniels don't fall within the PSJVTA's jurisdictional provisions. So, yes, I did make a reference to an argument that the defendants asserted in the Sokolow case because I fully anticipate that they'll assert the same arguments in this case --

THE COURT: Look, counsel --

MR. SINAIKO: -- which is why --

THE COURT: -- I'm tired of you, you know, anticipating what's going to happen and then, you know, we go off on these tangents arguing about it. If and when it happens, let's deal with it. Until it happens, I don't really want to hear about it.

MR. SINAIKO: Certainly, your Honor.

THE COURT: Now, let me try to bring this to some

kind of closure. With respect to any claims of privilege or any documents withheld that clearly fall within the scope of a legitimate discovery request, under the Federal Rules there do need to be privilege logs that get produced. Having said that, I think I made it pretty clear, Mr. Sinaiko, that I do not consider a request that says, "Give me every document relating to activity conducted at the UN mission," is an appropriate request. So by when are you going to narrow your requests?

MR. SINAIKO: Well, I would think, as I said before, that it would be helpful to have some information from Mr. Berger in advance of serving the revised discovery requests. I don't know if Mr. Berger is prepared to provide that information, but, for example, if he was prepared to provide us with a list of agents and employees and others who engage in activities in the United States on behalf of the defendants, I think that would be very helpful to us in terms of focusing our discovery requests and making them targeted in a way that will minimize future, you know, future disputes and future conversations of this sort with the Court, which we obviously don't want to burden you with. So I think --

MR. BERGER: Your Honor -- excuse me. Mitchell Berger --

MR. SINAIKO: -- it's --

MR. BERGER: -- speaking. I did provide --

MR. SINAIKO: I'm not quite done.

MR. BERGER: -- we did provide that list. It is nothing more than a roster of the personnel of Palestine's UN mission. Again, this is a legal argument. They're saying, "Well, that can't be all. We think you've got secret sleeper agents elsewhere." They simply won't believe what they see and hear.

MR. SINAIKO: No list was ever provided, Mitch. I'm sorry, no list was ever provided to us. I know that you said you had a list that your clients were working on preparing in Palestine that they were going to supply to us. But I don't think that list was ever sent. So maybe if you sent it to me before you --

THE COURT: Counsel, stop. Stop. Mr. Berger, if you say you've already provided a list, send it again. And I'd like it to be sent within -- what day is it today, Thursday? -- I'd like it to be sent by close of business Monday.

MR. BERGER: Absolutely, your Honor.

THE COURT: Thank you. All right.

MR. SINAIKO: And we'd be pleased to serve a revised document request. I don't know, can we do it

within seven days after they provide us with this list?

THE COURT: Is this Mr. Sinaiko?

MR. SINAIKO: It is Mr. Sinaiko. I'm so sorry. I'm still not completely accustomed to doing these things by telephone. But, yes. Would it be all right if we served our revised document requests within seven days after we receive the list from Mr. Berger?

THE COURT: One week from Monday.

MR. SINAIKO: Correct.

THE COURT: Let me just pull out a calendar here. Monday is May 3rd, hard to believe. So by May 10th you will revise your requests. And by "revise" them, I mean narrow them. I --

MR. SINAIKO: Of course.

THE COURT: -- don't mean -- all right, by --

MR. SINAIKO: We get it.

THE COURT: -- when will a revised set of responses be due?

MR. BERGER: I'm sorry, your Honor. If that's -- this is Mitchell Berger -- if that's directed to us, again, it's hard to know in a vacuum how much narrower their requests will be and whether, for example, the need to log documents in the embassy, all of which is going to require physical review, I mean, respectfully, if they're going to

be narrowed, we would like to have 30 days to respond. I mean, I understand your Honor's going to set a new schedule here, but that would be --

THE COURT: That's what I'm doing.

MR. BERGER: Yes, absolutely.

THE COURT: That's what I'm doing.

MR. BERGER: Right. No, your Honor, I'm just respectfully suggesting that, given that we are dealing with a mystery until we see their revised requests and given everything else your Honor has said, we'd like 30 days to respond.

THE COURT: Right. I mean, you're allowed 30 days under the Federal Rules, so I'm going to give you 30 days. But I am telling the parties right now this is your final extensions, and this schedule on jurisdictional discovery is final. And I'm going to, at the end, set the deadline for motion practice, just as I did in the last Order. There will be no further extensions. The defendants will be permitted to file their motion on the deadlines that we set. And jurisdictional discovery is coming to a close. If there are motions that need to be made, if somebody is disobeying a discovery order or not providing legitimate discovery, there are motions that can be brought on. And sanctions will be imposed for abuses of the discovery

process. But this has to come to a close. This is a 2018 case. So responses will be due on or before June 10.

Now, the depositions that have been noticed -- as I said, depositions, you're free, Mr. Sinaiko, to ask for a 30(b)(6) if that would streamline things, but I'm not going to tell you that you cannot take depositions of named individuals. I am telling you that if counsel on the other side has a legitimate objection on the grounds of privilege, that is an acceptable reason to instruct not to answer.

MR. SINAIKO: Right. And we understand the rules that your Honor is setting.

THE COURT: The rule's in the Federal Rules. I'm not making this up as we go along.

MR. SINAIKO: It's Steve Sinaiko, your Honor. I get it.

THE COURT: Right. Depositions are to be completed -- let me just go back to my prior Order. How long had I given you for depositions?

MR. SINAIKO: I don't think, your Honor, that there actually was a specific schedule -- it's Steve Sinaiko again -- I don't think there was a specific schedule set for the taking of depositions. I think the Court simply set an overall 60-day period for completing

jurisdictional discovery. But I agree that, you know, with the idea that it would be helpful to actually have a time when the depositions are supposed to take place.

THE COURT: All right, so I am going to just give you a further 60 days to get this all done. And that includes what we've already talked about. So 60 days from today everything is finished, including the depositions.

MR. SINAIKO: But if we don't get -- I guess the idea is --

THE COURT: Who is this?

MR. SINAIKO: -- that we'll have plaintiffs -- we'll have plaintiffs' documents by May 10th, and then we'll have, you know, basically 30 days following that to take our depositions.

THE COURT: Who was that speaking, please?

MR. SINAIKO: This is Steve Sinaiko. I'm so sorry.

THE COURT: Okay, I'm sorry, but I can't, you know, identify your voices over the phone.

MR. SINAIKO: I apologize, your Honor. I recognize that doing these things by telephone is difficult.

MR. BERGER: So, you know, Mitchell Berger here, if I might? I understand what Mr. Sinaiko is suggesting.

And perhaps the way to just have some clarity on that is we understand your Honor has set June 10th for our date for responding in documents. And to avoid waste of time, since I'm sure they will want whatever documents we've produced in advance of the depositions, depositions perhaps should be taken following production of documents and before the end, of course, of the 60-day jurisdictional discovery period that your Honor has set.

THE COURT: Well, that's --

MR. SINAIKO: Your Honor --

MR. BERGER: We would respectfully suggest that.

MR. SINAIKO: Your Honor, it's Steve Sinaiko. I actually think Mr. Berger and I agree on this. We do agree that depositions shouldn't be taken until after documents are produced. If documents aren't being produced until, you know, the second week of June, I would think that we would want to have 30 days after that to review the documents that are produced and take the depositions. So if we could have the schedule run through maybe 30 days after the document production, which would be sometime in July -- and I think that would put us, you know, with an extension of more than 60 days from the original schedule -- that would be terrific.

THE COURT: I didn't say anything about the

original schedule. I said from today.

MR. BERGER: Oh, okay. I'm sorry. I thought you said -- I thought you were adverting to 60 days from the original -- yeah, a 60-day extension of the original schedule. But 60 days from today sounds like it would --

THE COURT: I said -- folks, I said 60 days from today. So I acknowledge that you're not going to get your revised document demands out until May 10th, which is roughly one week from today, but -- and responses then due June 10th. So July 10th, which is a Saturday, so it's July 9th, all depositions will be completed. If the parties are able to agree that you're not going to actually start taking the depositions until the documents are turned over on June 10th, that's fine. But I'm not going to put that in an Order.

MR. SINAIKO: Your Honor, it's Steve Sinaiko. That's fine with us. One further question, your Honor. Will we be getting revised responses to the interrogatories that we previously served, in light of your Honor's rulings today?

THE COURT: I don't really know anything about interrogatories. That's the one round of letters you didn't send me. Are there issues with that, as well?

MR. SINAIKO: Well, there were, your Honor. They

were actually addressed in one of the letters, one of the joint letters that we sent you on March 24th.

THE COURT: I'm sorry.

MR. SINAIKO: It dealt with both document production and interrogatory responses because --

THE COURT: I'm sorry, you're right; it does.

MR. SINAIKO: No worries. The position that defendants took with respect to interrogatories was substantially the same as the position that they took on documents, which is to say they would provide the limited number --

THE COURT: Look, you don't need to repeat it. I was --

MR. SINAIKO: Understood.

THE COURT: -- trying to say that where I said revised document requests by May 10th, you can narrow your interrogatories as well by May 10th. If they don't need narrowing, I'm not going to micromanage that. And responses to the document requests and interrogatories will be due on June 10th.

MR. SINAIKO: Perfect. Thank you, your Honor.

THE COURT: And depositions will go thereafter.

Now, what about the Requests for Admissions?

MR. BERGER: Your Honor, this is Mitchell Berger.

Is that question directed to Mr. Sinaiko about narrowing the 200 Requests for Admissions that they propounded?

THE COURT: I suppose it is, yes.

MR. SINAIKO: So, first of all, just to dispose of that notion a little bit, we served two identical sets. And I'm not sure this makes any difference, but to be perfectly accurate, we served two substantially identical sets of about 97 Requests for Admissions on each of the defendants. But they were substantially identical. You know, if we are -- I mean, we do have concerns about the responses that we got to the Requests for Admissions because, as we pointed out before, they are inappropriate in a lot of ways. We've already talked about that. There's no need to rehash it here. But I suppose we could, at some point during the -- you know, at some point during this period for, you know, for -- extended period for jurisdictional discovery, serve a revised set of Requests for Admissions if we're so advised, and Mr. Berger presumably could respond to them consistent with the rulings that we've gotten today.

THE COURT: All right, here's where I am on the Requests for Admissions. The Federal Rules are pretty clear about the impact of a nonresponse or an inadequate or inappropriate response to a Requests for Admissions. So

the parties act at their own peril. If they haven't been properly responded to or objected to, then the rules say in certain instances that that's deemed to be an admission.

MR. BERGER: Your Honor, this is Mitchell Berger for defendants. And we hear you loud and clear. And as a point of --

THE COURT: In the --

MR. BERGER: -- information I want to -- excuse me, your Honor. I apologize.

THE COURT: In the meantime, I've told the plaintiffs that I think the requests are overly broad. And I don't care if it's, you know, 100 to each party identical or 97 to each party identical set, 97 Requests for Admissions on the very narrow question of whether jurisdiction exists under the terms of the statute, not is the statute constitutional, not can you make out a claim on the merits, but can you establish the predicates for jurisdiction, it doesn't seem to me that you should need 97 questions or Requests for Admissions. So you might very well want to go back and narrow them. I am not going to micromanage or tell people how to litigate their cases. But I'm giving you my guidance. So, Mr. Sinaiko, it's up to you. They --

MR. SINAIKO: Your Honor, it's Steve --

THE COURT: -- as co --

MR. SINAIKO: -- your Honor -- I'm so sorry.

THE COURT: May 10th is the deadline for revising your demands; June 10th is the deadline for responses to the revised demands. If they are not revised, they'll have whatever impact they have when we get to dealing with them. And that's all the guidance I'm going to give people on that.

MR. SINAIKO: Your Honor, this is Steve Sinaiko. One question. May we have -- is it required that we serve -- if we're going to serve revised Requests for Admissions, do those need to be served by May 10th, as well, or could we serve those, you know, at a later time as long as the responses to them are due in advance of July 9th?

THE COURT: I'm going to direct that you and Mr. Berger talk to each other and figure that out so that responses can be received by whenever you need them, and all jurisdictional discovery will be completed by July 9th.

MR. SINAIKO: Your Honor, it's Steve Sinaiko. Thank you very much for that guidance. I appreciate it.

THE COURT: Mr. Berger, anything from you?

MR. BERGER: I was simply going to complete the thought so there's a full record on the Requests for

Admissions, which is particularly in light of what your Honor said about the consequences under the rules, we either admitted or denied every single request, which is what the rules require. But we look forward to narrowed requests from plaintiffs.

THE COURT: If he chooses to.

So all right, now, given that we've set July 9th as the cutoff for all jurisdictional discovery -- and I'm warning people if there are issues on which you need rulings from the Court, you need to ask for a Protective Order or a Motion to Compel sufficiently in advance so that you get a ruling and discovery can be completed by July 9th. Don't wait until July 9th or 10th to first start complaining to me.

MR. SINAIKO: Your Honor, if I could? It's Steve Sinaiko. Obviously -- you know, to the extent that depositions run close to July 9th, it may not be possible for us to raise issues relating to the depositions in advance of that date. I'm assuming that that would not be a problem.

THE COURT: Mr. Sinaiko, that --

MR. SINAIKO: In other words, I'm assuming that if there were a problem with the --

THE COURT: [indiscernible]

MR. SINAIKO: -- depositions --

THE COURT: -- own peril, sir. You know, the level of guidance that you seem to be needing here and, you know, anticipation or problems that you ought to work out professionally is just mind boggling to me. I'm not responding any further with respect to how you ought to comport your, you know, behavior or conduct this litigation.

MR. SINAIKO: Your Honor, Steve Sinaiko --

THE COURT: Final --

MR. SINAIKO: -- we're just trying to do this in a way that's going to be acceptable to the Court. But I get the message.

THE COURT: The final thing I would like to talk about is, Mr. Berger, you have told the Court that you plan to file a Motion for Summary Judgment. Under the existing Order, how long had you -- I don't have the Order right in front of me -- how long had you asked for to file your motion?

MR. BERGER: Your Honor, had set a date of 21 days following the close of discovery. So the deadline for filing motions was tomorrow, 21 days after an April 9th cutoff of jurisdictional discovery. We were going to file both a Motion to Dismiss on TSJVTA grounds and a Motion for

Summary Judgment based on the preexisting discovery. Twenty-one days is ample. If following the close of discovery on July 9th -- I haven't looked at a calendar to see whether July 30th is a weekend or a weekday, but I'm doing so now.

THE COURT: July 30th is a Friday. So July 30th, any motions will be made. How long had I allowed for oppositions?

MR. BERGER: Your Honor had allowed two weeks -- this is Mitchell Berger -- two weeks for opposition and one week for reply. But I'm sure both parties would be happy to have a more generous set of time limits. But, of course, we'll do whatever the Court wants.

THE COURT: Give me one moment, please. I just want to email about something with one of my clerks. So give me one moment, all right?

MR. BERGER: Certainly.

THE COURT: All right, Mr. Sinaiko, how long are you asking to get an opposition in?

MR. SINAIKO: You know, your Honor, I think if we could have three weeks to do our opposition papers, that would be the same amount of time that Mr. Berger is getting to do his opening papers, that would be terrific.

THE COURT: Okay. So three weeks from July 30th

is August 20th.

MR. SINAIKO: I suppose I should ask -- your Honor, I suppose I should ask Mr. Lowell if that's all right for him, as he probably has some roll in preparing these papers, as well.

MR. LOWELL: Your Honor, this is Abbe Lowell. I was going to wait, but I was going to ask for that three weeks. And if that makes sense, that's great.

THE COURT: Perfect. So August 20th is three weeks.

Then, Mr. Berger, how long -- you're saying both sides want more time. How long do you want for your reply?

MR. BERGER: If we could have two weeks, your Honor, which looks like September 3rd, as a Friday, that would be ideal.

THE COURT: Okay. Friday, September 3rd.

All right, anything else from anybody?

MR. BERGER: Thank you, your Honor.

THE COURT: All right, then --

MR. SINAIKO: Nothing else for the plaintiffs, your Honor. Thank you.

THE COURT: All right, thank you. We are adjourned, then. Everyone have a nice rest of the day, and please stay safe and healthy.

MR. SINAIKO: Thank you, your Honor.

MR. BERGER: Thank you, Judge.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Shatsky et al v The Palestine Liberation Organization et al, Docket #18-cv-12355-MJV, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: May 3, 2021